

Preliminary adoption to amend Gypsy Moth Quarantine 312 IAC 18-3-14 to add LaPorte and St. Joseph counties; Administrative Cause No. 11-056E

The DNR Gypsy Moth Management Program's goal is to slow the spread of this forest defoliator that has the ability to impact 80% of Indiana's forest resources, primarily oak, maple and hickory. To date, the program goal of a spread rate at or below 6 miles per year has successfully been met. One of the management tools to achieve this goal is the gypsy moth quarantine, which is used to manage artificial spread of gypsy moth by man. The proposed amendment to the quarantine renews a previous adoption of St. Joseph County and now includes LaPorte County. Prior to these counties, the last addition to the quarantine was Porter County in 2000. Indiana's gypsy moth quarantine is also a parallel quarantine to the USDA Gypsy Moth quarantine. The USDA is also in the process of adding St. Joseph and LaPorte Counties to their quarantine. The adoption and full implementation of St. Joseph and LaPorte Counties to 312 IAC 18-3-14 maintains the parallel quarantine status. Without this adoption, the entire state would be placed under USDA quarantine for gypsy moth thereby restricting movement and interfering with trade.

TITLE 312 NATURAL RESOURCES COMMISSION

**Proposed Rule
LSA Document #11-**

DIGEST

Amends 312 IAC 18-3-14 to add LaPorte County and St. Joseph County to the listing of counties declared to be infested with and subject to the gypsy moth quarantine. Updates cross-references to statutes governing horticulture products. Effective 30 days after filing with the Publisher.

312 IAC 18-3-14 Control (quarantine) of gypsy moth

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-8-2-202; IC 14-24-4-1; IC 14-24-4-4; IC 14-24-5-7; IC 15-16-4-37; IC 15-16-5

Sec. 14. (a) The gypsy moth (*Lymantria dispar*) is a pest or pathogen. This section governs standards for the control of gypsy moth in Indiana.

(b) In addition to the definitions contained in 312 IAC 1-1 and 312 IAC 18-1, the following definitions apply throughout this section:

(1) "Associated equipment" means any article associated with mobile homes and recreational vehicles and includes the following:

- (A) Awnings.
- (B) Tents.
- (C) Outdoor furniture.
- (D) Trailer blocks and hitches.
- (E) Trailer skirts.

(2) "Certificate" means a document issued by an inspector, a qualified certified applicator, or any other person operating under a compliance agreement to allow the movement of regulated articles to any destination.

(3) "Compliance agreement" means a written agreement between the department and a person engaged in growing, selling, processing, handling, or moving regulated articles.

(4) “Effectively diminishing” means the results of two (2) successive annual federal or state delimiting trapping surveys of an area conducted under section 2, “Gypsy Moth Survey”, of the program manual show that the average number of gypsy moths caught per trap in the second delimiting survey (when comparable geographical areas and trapping densities are used) is:

- (A) less than ten (10); and
- (B) less than the average number of gypsy moths; caught per trap in the first survey.

(5) “Eradication program” means a program that uses pesticide application, biological controls, or other methods with the goal of eliminating gypsy moth from an infested area.

(6) “General infestation” means either of the following:

- (A) The detection of gypsy moth egg masses through visual inspection by an inspector during a ten (10) minute walk through the area, but it does not include the presence of gypsy moth egg masses that are found as a result of hitchhiking on transitory means of conveyance.
- (B) The detection of gypsy moth through multiple catches of adult gypsy moths at multiple trapping locations in the area for two (2) or more consecutive years if the state entomologist determines the gypsy moth is established in the area.

(7) “Generally infested area” means an area that is listed or designated as set forth under either of the following:

(A) A state or portion of a state listed in 7 CFR 301.45-3 or temporarily designated as a generally infested area under 7 CFR 301.45-2(c).

(B) An Indiana county or portion of a county listed as generally infested in this rule.

(8) “Gypsy moth” means any race or strain of the live insect, *Lymantria dispar*, in any life stage (egg, larva, pupa, or adult).

(9) “Infested area” means any of the following:

(A) An area in Indiana where the gypsy moth has been found and is known to have two (2) or more life stages present.

(B) An area for which it is determined by the state entomologist as necessary to regulate because of the proximity of the infested area to a generally infested area or another infested area.

(C) An area where a life stage of the Asian strain or another related strain of gypsy moth has been found.

(10) “Inspector” means a person designated to assist in the implementation of this section and includes each of the following:

(A) An authorized employee of the division as defined in 312 IAC 18-1-6.

(B) A federal employee authorized by the United States Department of Agriculture who is also authorized by the state entomologist.

(C) Another person trained and authorized by the state entomologist.

(11) “Interstate” means from any state into or through any other state.

(12) “Intrastate” means within Indiana.

(13) “Limited permit” means a document issued by a federal inspector or an authorized state cooperator under 7 CFR 301.45 to allow the interstate movement of regulated articles to a specified destination.

(14) “Mobile home” means a vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

(15) “Move” means any of the following:

(A) Ship.

(B) Offer for shipment to a common carrier.

(C) Receive for transportation or transported by a common carrier.

(D) Carry, transport, move, or allow to be moved by a person by any means.

“Movement” and “moved” shall be construed under this subdivision.

(16) “Outdoor household articles” or “OHA” means articles associated with a household that are kept outside the home. The term includes the following:

(A) Awnings.

(B) Benches.

(C) Birdhouses.

(D) Bird feeders or other feeders.

(E) Boats.

(F) Chairs.

(G) Children’s playhouses.

- (H) Children's playthings.
- (I) Doghouses.
- (J) Firewood.
- (K) Garden equipment.
- (L) Garden machinery.
- (M) Grills.
- (N) Hauling trailers.
- (O) Outdoor furniture.
- (P) Planters.
- (Q) Sandboxes.
- (R) Tables.
- (S) Utility sheds.
- (T) Tents.
- (U) Similar articles.

(17) "Person" has the meaning as set forth in IC 14-8-2-202(c).

(18) "Program manual" means the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Gypsy Moth Program Manual, 1994 edition.

(19) "Qualified certified applicator" or "QCA" means an individual who is not an inspector but:

(A) is certified in Indiana under ~~IC 15-3-3.6~~ **IC 15-16-5** under the portions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) found at 7 U.S.C. 136i(a) through 7 U.S.C. 136i(c) as a certified commercial applicator in a category allowing use of a "restricted use pesticide" as defined at ~~IC 15-3-3.5-2(27)~~ **IC 15-16-4-37**;

(B) has attended and completed a workshop approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine on the identification and treatment of gypsy moth life stages on outdoor household articles and mobile homes; and

(C) has entered into a compliance agreement under 7 CFR 301.45-6 for the purpose of inspecting, treating, and issuing certificates for the movement of outdoor household articles and mobile homes.

(20) "Recreational vehicle" means any highway vehicle designed to serve as a temporary place of dwelling or business. The term includes pickup truck campers, one-piece motor homes, travel trailers, and similar vehicles.

(21) "Regulated article" includes each of the following:

(A) Trees without roots, for example, Christmas trees, trees with roots, and shrubs with roots and persistent woody stems (unless greenhouse-grown throughout the year).

(B) Logs, pulpwood, and wood chips.

(C) Mobile homes and associated equipment.

(D) Any other products, articles, or means of conveyance if an inspector determines:

(i) a life stage of gypsy moth is in proximity to the articles; and

(ii) the articles present a high risk of artificial spread of gypsy moth infestation; and the person in possession of the articles is so notified.

(c) The following items are regulated under this section:

(1) Gypsy moths.

(2) Trees and woody shrubs, including cut Christmas trees, and nursery stock, not grown in a greenhouse throughout the year.

(3) Logs, slab wood, wood chips, and pulpwood unless moved to a mill operating under a compliance agreement.

(4) Recreational vehicles, boats, trailers, tents, and associated equipment.

(5) Mobile homes and associated equipment.

(6) Outdoor household articles.

(7) Any other products, articles, or means of conveyance if it is determined by an inspector that a life stage of the gypsy moth is in proximity to such articles, presenting a risk of artificial spread of the gypsy moth, and the person in possession of those articles is so notified.

(d) The designation of a generally infested area becomes effective immediately upon publication of a notice caused to be placed by the state entomologist in a newspaper of general circulation in the affected county. The notice shall include the process by which an affected person may take administrative review under 312 IAC 3-1.

(e) The Indiana counties declared to be generally infested areas and subject to quarantine under this rule are as follows:

- (1) Allen County.
- (2) Dekalb County.
- (3) Elkhart County.
- (4) LaGrange County.
- (5) LaPorte County.**
- ~~(5) (6)~~ Noble County.
- ~~(6) (7)~~ Porter County.
- (8) St. Joseph County.**
- (9) Steuben County.**

(f) The movement of regulated articles is governed by the following standards:

(1) No common carrier or other person shall move from a generally infested area any regulated article into or out of Indiana except under the conditions set forth in this subsection.

(2) A certificate must accompany the movement of regulated articles from a generally infested area into or through any area that is not a generally infested area. A copy of the certificate must be forwarded to the Indiana Department of Natural Resources, Division of Entomology and Plant Pathology, within seven (7) days of movement. Certificates may be issued by an inspector if the regulated articles:

- (A) originated in a not generally infested area and are not exposed to infestation while within the generally infested area;
- (B) are found by an inspector to be free of infestation;
- (C) are treated under procedures approved by the state entomologist to destroy any infestation;
- (D) are grown, produced, manufactured, stored, or handled so no infestation is transmitted; or
- (E) are handled, used, processed, or treated at the destination so the movement will not spread the gypsy moth.

(3) There are no restrictions imposed on the movement of regulated articles exclusively within a generally infested area.

(4) A certificate for the movement of regulated articles may be conditioned by an inspector to assure compliance with this rule and may be canceled for failure to comply with this rule or any term of the conditions.

(g) An inspector may, under IC 14-24-4-1, stop and inspect, without a warrant, any person or means of conveyance moving within Indiana upon probable cause to believe the person or means of conveyance is carrying infested articles. The inspector may by order seize, treat, destroy, or otherwise dispose of articles found to be moving in violation of this subsection. Items will be destroyed only if it is determined by the inspector that destruction is the only feasible method to avoid transportation of the life stages of gypsy moth. The order shall specify that an aggrieved person may request administrative review in the same manner as is provided under IC 14-24-5-7(d).

(h) The division may at any time treat campgrounds, roadside rests, and similar sites to eradicate or suppress a gypsy moth infestation.

(i) The following conditions govern the intrastate movement of regulated articles and household articles from generally infested areas:

(1) Except as provided in subdivision (3) or (4), a regulated article must not be moved from an infested area or a generally infested area within Indiana or moved outside Indiana unless a certificate or permit is issued and attached to the regulated article under 7 CFR 301.45-5, 7 CFR 301.45-8, and this section.

(2) An outdoor household article must not be moved within Indiana or moved outside Indiana from a generally infested area into or through an area that is not generally infested unless a certificate of OHA document is issued and attached to the outdoor household article under 7 CFR 301.45-5, 7 CFR 301.45-8, and this section.

(3) A regulated article originating outside a generally infested area may be moved interstate and intrastate directly through a generally infested area without a certificate or permit if the point of origin for the article is clearly indicated by shipping documents, its identity is maintained, and the article is safeguarded against infestation while in a generally infested area during the months of April through June. To be safeguarded, the article must be in an enclosed vehicle, or completely enclosed by a covering adequate to prevent access by gypsy moths. Examples of an appropriate covering include canvas, plastic, or closely woven cloth.

(4) A regulated article originating in a generally infested area may be moved interstate from a generally infested area without a certificate if one (1) of the following is satisfied:

(A) The article is moved by the United States Department of Agriculture or by authorized personnel of the department for experimental or scientific purposes under a permit issued by the United States Department of Agriculture for interstate movement or by the department for intrastate movement. An article or the container must have securely attached a tag or label bearing the permit number.

(B) The article is logs, pulpwood, or wood chips and the person moving the article has attached a signed accurate statement to the waybill, or other shipping documents accompanying the article, indicating the person inspected the article under the program manual no more than five (5) days before movement and found no life stages of gypsy moth on the article.

(j) The following are requirements concerning the issuance and cancellation of certificates, limited permits, and outdoor household article documents:

(1) A certificate may be issued by an inspector for the movement of a regulated article or an outdoor household article if the inspector determines the article is eligible for certification for movement to a destination under any federal domestic plant quarantines applicable to the article and at least one (1) of the following conditions is met:

(A) The article originated in noninfested premises in a generally infested area and has not been exposed to the gypsy moth while within the generally infested area.

(B) An inspector inspects the article no more than five (5) days before movement during the months of April through August (fourteen (14) days before movement from September through March) and finds it to be free of gypsy moth.

(C) The article is treated under the direction of an inspector to destroy the gypsy moth under the program manual.

(D) An inspector determines the article is grown, produced, manufactured, stored, or handled so no infestation would be transmitted.

(2) Limited permits may be issued by an inspector to allow interstate movement of a regulated article to specified destinations for handling, use, processing, or treatment under the program manual, if the inspector determines other federal domestic plant quarantines are met and either:

(A) the movement will not result in the spread of the gypsy moth because life stages of the moths will be destroyed by the specific handling, use, processing, or treatment; or

(B) the gypsy moth will not survive in areas to which the regulated article is to be shipped.

(3) A certificate and limited permit form may be issued by an inspector to a person for use for subsequent shipments of regulated articles if the person is operating under a compliance agreement. A person operating under a compliance agreement may execute and issue the certificate forms, or reproduction of the forms, for the interstate movement of regulated articles from the person's premises, if:

(A) the person treats the articles as specified in the compliance agreement; and

(B) the regulated articles are eligible for certification for movement under any applicable federal domestic plant quarantines.

A person operating under a compliance agreement may execute and issue the limited permit forms, or reproductions of the forms, for the interstate movement of regulated articles to specified destinations if an inspector complies with subdivision (2).

(4) A certificate may be issued by a qualified certified applicator for the interstate movement of an outdoor household article or mobile home if the qualified certified applicator determines:

(A) the article was inspected by the qualified certified applicator and found to be free of any life stage of the gypsy moth; or

(B) the article has been treated to destroy the gypsy moth under section 3 of the program manual by, or under the direction of, a qualified certified applicator.

(5) An OHA document may be issued by the owner of an outdoor household article for the interstate movement of the article if the person inspects the outdoor household article and finds it to be free of the gypsy moth.

(6) A certificate or permit issued or authorized under this subsection may be suspended by an inspector upon a determination that a condition of the certificate or permit has been violated. The reasons for the suspension shall be set forth in a written notice under IC 14-24-5-7(d) and may include an order to destroy or control any article to prevent the spread of the gypsy moth.

(k) This subsection governs compliance agreements as follows:

(1) A person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of the articles. A compliance agreement shall specify safeguards necessary to prevent spread of the gypsy moth, including disinfestation practices and the appropriate application of chemical materials. Compliance agreement forms may be obtained from an inspector.

(2) A compliance agreement may be suspended in writing by an inspector if the inspector determines the agreement has been violated. The reasons for the suspension shall be set forth in a written notice and may include an order to destroy or control any article so as to prevent the spread of the gypsy moth. The notice shall specify that an aggrieved person may request administrative review in the same manner as is provided under IC 14-24-5-7(d).

(l) The following governs the assembly, inspection, and certification of regulated articles and outdoor household articles where a person does not possess a certificate or limited permit issued under subsection (j):

(1) A person who wishes to apply for a certificate under this subsection must request an examination according to the following schedule:

(A) At least seven (7) days before the intended movement of the regulated article if the examination is to be performed by an inspector.

(B) At least fourteen (14) days before the intended movement of an outdoor household article if a certificate is to be issued under 7 CFR 301.45.

(C) As required by a qualified certified applicator if a certificate is to be issued for an outdoor household article or mobile home under 7 CFR 301.45-5d.

(2) The inspector or qualified certified applicator may specify any reasonable location or manner for the assembly of articles to be examined.

(m) The following governs the attachment of documentation to evidence a certificate or limited permit issued under this section:

(1) A certificate, limited permit, or OHA document required for the intrastate or interstate movement of a regulated article or outdoor household article must, during movement, be securely attached to:

(A) the outside of the container containing the regulated article or outdoor household article;

(B) the article itself if not in a container; or

(C) the consignee's copy of the waybill or other shipping document.

(2) The requirements of subdivision (1) are met by attaching the certificate, limited permit, or OHA document to the consignee's copy of the waybill or other shipping document only if the regulated article or outdoor household article is sufficiently described on the certificate, limited permit, OHA document, or shipping document to identify such article.

(3) The certificate, limited permit, or OHA document, for the movement of a regulated article or outdoor household article, must be furnished by the carrier to the consignee at the destination of the shipment.

(4) A qualified certified applicator who issues a certificate or OHA document shall at the time of issuance send a copy of the certificate or OHA document to the United States Department of Agriculture, Animal and Plant Health Inspection Service for Indiana.

(5) An inspector may, under IC 14-24-4-1, stop and inspect a shipment to determine if the gypsy moth is present. A regulated article may be destroyed, treated, or otherwise disposed as directed by the department under IC 14-24-4-4.

(n) This section does not preclude the state entomologist from issuing a permit under this rule for the movement of live gypsy moths.

(o) A person who violates this section is subject to applicable federal penalties and to applicable state penalties under IC 14-24 and this article. (*Natural Resources Commission; 312 IAC 18-3-14; filed Apr 17, 1998, 2:45 p.m.: 21 IR 3336; filed Feb 9, 1999, 5:05 p.m.: 22 IR 1947; filed Mar 23, 2001, 2:47 p.m.: 24 IR 2399; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Sep 19, 2008, 10:23 a.m.: 20081008-IR-312080076RFA*)